



## South Dakota One Call Notification Board

Larry Englerth  
Executive Director

1012 North Sycamore Ave.  
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529  
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June 2, 2004

Kevin Peters, Service Foreman  
GoldenWest Telecommunications  
Winner, SD 57580

Brian Schweigert  
Prairie Hills Construction  
28172 347<sup>th</sup> Avenue  
Burke, SD 57523

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 2, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-002 (A) and Complaint OC04-002 (B) filed by Golden West Telecommunications against Prairie Hills Construction.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

### **Complaint OC04-002 (A)**

#### **Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

The Enforcement Committee found that there was probable cause that Prairie Hills Construction had violated SDCL 49-7A-5 by commencing without providing advance notification to the South Dakota One Call System.

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred dollars (\$300.00) suspended on the basis that Prairie Hills Construction fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-002 (A).

### **Complaint OC04-002 (B)**

#### **Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility**

The Enforcement Committee found that there was probable cause that Prairie Hills Construction had violated SDCL 49-7A-12 by failing to notify Golden West Telecommunications or the South Dakota One Call System that an underground facility had been damaged.

The committee recommends a penalty of one-thousand dollars (\$1000.00) with six-hundred dollars (\$600.00) suspended on the basis that Prairie Hills Construction fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-002 (B).

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachment. **Please return the signed form prior to the close of business on June 18, 2004 to:**

South Dakota One Call Notification Board  
1012 N. Sycamore Avenue  
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation (s) alleged in the rejected complaint(s). Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19..

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.**

Sincerely,

Larry L. Englerth  
Executive Director

# **ENFORCEMENT COMMITTEE ACTION**

## **OC04-002 (A)**

### **Golden West Telecommunications vs. Prairie Hills Construction**

#### **FINDINGS:**

#### **OC04-002 (A)**

##### **Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

Allegation is made by Golden West Telecommunications that Prairie Hills Construction commenced excavation on March 13, 2004, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

The response received from Prairie Hills Construction did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Golden West Telecommunications and the response from Prairie Hills Construction, the committee determined the following:

1. Prairie Hills Construction had commenced excavation without providing proper advance notification to the South Dakota One Call System as required by statute.
2. There is no exclusion in SDCL 49-7A-5 for excavation activity on private property.
3. The determination of whether an easement existed for the placement of the facility would not be a factor in whether the excavator is required to provide notification to the South Dakota One Call System.
4. The determination of whether the facility is placed on public right of way or private property would not be a factor in whether the excavator is required to provide notification to the South Dakota One Call System.

Based on the information noted above, the Committee found that there was probable cause that Prairie Hills Construction had violated SDCL 49-7A-5 by commencing excavation without providing advance notification to the South Dakota One Call System.

## **RECOMMENDATION**

**OC04-002 (A)**

### **VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that Prairie Hills Construction had violated SDCL 49-7A-5 by commencing excavation on March 13, 2004, without providing advance notification to the South Dakota One Call System as required by statute.

### **PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Prairie Hills Construction fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-002 (A).

### **COMMENTS:**

The committee would recommend that Prairie Hills Construction thoroughly review the Operations Manual for Facility Operators and Excavators that was enclosed with the complaint documents. This will clarify that notification of the South Dakota One Call System is required for almost all excavation activity with the exception of the exclusions stated under the definition of Excavation in SDCL 49-7A-1.

# **ENFORCEMENT COMMITTEE ACTION**

## **OC04-002 (B)**

### **Golden West Telecommunications vs. Prairie Hills Construction**

#### **FINDINGS:**

#### **OC04-002 (B)**

##### **Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility**

Allegation is made by Golden West Telecommunications that Prairie Hills Construction damaged an underground telecommunications cable while excavating on March 13, 2004, and failed to properly notify Golden West Telecommunications or the South Dakota One Call Center as required by statute.

The response received from Prairie Hills Construction did not dispute the allegation that excavation activity occurred at the site of the damage but the response claimed that Prairie Hills Construction was not aware that a damage had occurred..

In reviewing the complaint filed by Golden West Telecommunications and the response from Prairie Hills Construction, the committee determined the following:

1. Prairie Hills Construction did damage an underground facility while excavating on March 13, 2004.
2. The Golden West Technician readily identified the location of the damaged cable as it was protruding about four feet above the ground.
3. Prairie Hills Construction was notified by a landowner that telephone service had been interrupted which, based on the fact that they were excavating without proper notification, should have caused them to conduct a site inspection at which point the damaged cable would have been noticed.
4. Prairie Hills Construction knew or should have known based on prudent excavation practices that damage had occurred and was responsible to report the damage to Golden West Telecommunications.

Based on the information noted above, the Committee found that there was probable cause that Prairie Hills Construction had violated SDCL 49-7A-12 by failing to report the damage to the underground facility as required by statute.

## **RECOMMENDATION**

**OC04-002 (B)**

### **VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that Prairie Hills Construction had violated SDCL 49-7A-12 by their failure to report damage of an underground facility on March 13, 2004, to Golden West Telecommunications or the South Dakota One Call Center.

### **PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of one thousand dollars (\$1000.00) with six hundred dollars (\$600.00) suspended on the basis that Prairie Hills Construction fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-002 (B).

### **COMMENTS:**

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-002 (A)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-002(A).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.


SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC04-002 (A)**

**VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION**

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

  
\_\_\_\_\_  
Signature  
Prairie Hills Construction

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-002(A).

\_\_\_\_\_  
Signature  
Prairie Hills Construction

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-002 (B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-002(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.

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**OC04-002 (B)**

**VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION**

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(B) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.**



\_\_\_\_\_  
Signature  
Prairie Hills Construction

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(B) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-002(B).**

\_\_\_\_\_  
Signature  
Prairie Hills Construction



**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-002 (A)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-002(A).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(A). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

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**OC04-002 (A)**

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

 *Kevin Peters* Service Foreman

Signature

Golden West Telecommunications

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-002(A).

\_\_\_\_\_  
Signature

Golden West Telecommunications

## **ACCEPTANCE OR REJECTION BY PARTIES**

### **COMPLAINT OC04-002 (B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-002(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-002(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

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### **OC04-002 (B)**

**VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION**

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 *Kerin Peters Service Foreman*

Signature

Golden West Telecommunications

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-002(B) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-002(B).

\_\_\_\_\_  
Signature

Golden West Telecommunications

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin Peters, Service Foreman  
GoldenWest Telecommunications  
Winner, SD 57580

2. Article Number  
(Transfer from service label)

7003 1010 0000 7864 7879

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x Kevin Peters

☐ Agent☐ Addressee

B. Received by (Printed Name)

Kevin Peters

C. Date of Delivery

6-4-04

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

P.O. Box 1711

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Brian Schweigert  
Prairie Hills Construction  
28172 347<sup>th</sup> Avenue  
Burke, SD 57523

2. Article Number  
(Transfer from service label)

7003 1010 0000 7864 7862

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x Mike Schweigert

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/8/04

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes